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Error to Corporation Court of City of Danville.

Action by the Ferrell-Bledsoe Furniture Company, Incorporated, against the Southern Amusement Company, Incorporated. To review judgment for plaintiff, defendant brings error. Affirmed.

Harris & Harvey, of Danville, for plaintiff in error.

Eugene Withers, of Danville, for defendant in error.

REYNOLDS et al. v. ADAMS et al.

June 12, 1919.

[99 S. E. 695.]

1. Marriage (§ 40 (4)*)—Presumption—Cohabitation.—Cohabitation apparently matrimonial is a strong presumption in law of a valid marriage, subject to rebuttal.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 575.]

2. Marriage (§ 50 (4)*)—Validity—Sufficiency of Evidence.—Bona fide declarations by the reputed husband and wife that they were married in another state, made ever since their return from such trip, cohabitation until the husband's death, a general reputation of marriage, commencing after such alleged marriage, and recognition of the marriage by the parties hostile thereto, held sufficient to show the existence of a legal marriage.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 574, 576.]

3. Marriage (§ 47*)—Admissibility of Evidence—Declarations—Res Gestæ.—Declarations, made in good faith by parties claiming to be husband and wife, that they were married in another state, are admissible in evidence as part of the *res gestæ* for the purpose of showing that there was a legal marriage.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 574.]

4. Marriage (§ 40 (10)*)—Sufficiency of Evidence—Marriage in Another State—Testimony of Licensing Clerk.—Acts N. J. 1910, p. 477, § 3, providing for issue of marriage licenses to nonresidents by the registrar of vital statistics, or, if there be none, the city clerk, testimony by a city clerk that he is the only one from whom a license can be obtained, referred only to the time he testified, and, being his mere opinion, is not evidence sufficient to repel the presumption of a valid marriage alleged to have taken place in his city.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 576.]

5. Marriage (§ 50 (1)*)—Essentials of Proof—Introduction of Wife into Society.—Whether the alleged husband ever introduced the alleged wife into society as his wife is immaterial in proving

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the marriage, where neither the alleged husband nor wife moved at all in social life.

6. Marriage (§ 50 (1)*)—Assumption of Husband's Name—Inference from Evidence.—Where no evidence was introduced showing that the alleged wife did not bear her alleged husband's name from the time of their alleged marriage until she married a second time, but there was evidence showing that she had been introduced by the alleged husband as his wife, that after his death she had executed a note as his wife, and that the general reputation was that she was his wife, it will be inferred that she bore her reputed husband's name.

7. Appeal and Error (§ 934 (1)*)—Presumption as to Correctness.—Judgment of a court of competent jurisdiction will always be presumed to be right until the contrary is shown.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 576.]

8. Appeal and Error (§ 1022 (1)*)—Master Commissioner's Report—Effect—Weight Entitled to.—The report of a master commissioner, confirmed by a decree of the court below, is entitled to great weight, and should not be disturbed unless clearly at variance with the result of the evidence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 565.]

9. Partition (§ 25 (2)*)—Right to Partition—Rendering Account of Debts—Personal Estate—Necessity.—In suit for sale of real estate for partition under 4 Va. Code 1916, § 2564, it was not necessary that there should have been an account of debts against the personal estate of a testatrix under whose will the real estate was derived, before there was a decree of sale thereof for partition.

10. Partition (§ 88*)—Estates Subject to Partition—Estates Subject to Charges.—In suit for sale of real estate for partition, claim or liens, if any, upon the land by defendants under the will of testatrix from whom such land was derived, may be asserted under 4 Va. Code 1916, § 2564, and, if established, the proceeds of sale of partition applied thereto.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 803.]

11. Appeal and Error (§ 20*)—Judgment (§ 251 (1)*)—Scope—Limited to Issue in Pleadings.—Jurisdiction of the court below being limited to the issues made by the pleadings, the decree could not go outside of the issues to protect rights of parties asserted in argument but not in the pleadings; jurisdiction of the appellate court on appeal being likewise limited.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 296.]

Appeal from Circuit Court, King and Queen County.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Suit by Annie B. Adams and another against Mary Reynolds and others. From a decree in favor of plaintiffs, defendants appeal. Affirmed.

Isaac Diggs, of Richmond, and *J. W. Fleet*, of Biscoe, for appellants.

G. B. White, of Richmond, *H. I. Lewis*, of West Point, and *J. D. Mitchell*, of Walkerton, for appellees.

H. N. FRANCIS & CO., Inc. v. HOTEL RUEGER, Inc.

June 12, 1919.

[99 S. E. 690.]

1. Mechanics' Liens (§ 5*)—Liberal or Strict Construction—Statutes.—That part of a mechanics' lien statute relating to creation of the lien must substantially be complied with, but the provisions regarding its enforcement will be liberally construed; Code 1904 § 2478, providing that no inaccuracy in the account or description of the property shall invalidate the lien, if the description reasonably identifies the property and the account conforms substantially with sections 2476, 2477, and is not false.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 757.]

2. Mechanics' Liens (§ 149 (3*))—Subcontractor's Lien—Open Account—Particularity of Statement Required.—Where a lien claim of a subcontractor rests upon open account, more particularity of statement, as to specifying the amount and character of the work done, materials furnished, and prices charged therefor, is required than where the work done or materials furnished were contracted for as an entirety.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 769.]

3. Mechanics' Liens (§ 149 (2*))—Subcontractor's Lien—Statement in Account—Construction.—Statement, in an account upon which a subcontractor's lien is based, that certain work was done or materials furnished under agreement or contract for a specific sum, is equivalent to saying that it was under an express contract or was contracted for as an entirety.

4. Mechanics' Liens (§ 149 (2*))—Subcontractor's Lien—Statement of Account—Sufficiency.—Where an account upon which a subcontractor's lien is based contains a statement that certain work was done or materials furnished under agreement or contract for specific sum, and the evidence establishes that the work and materials were contracted for as an entirety, a general statement of the fact and the sum charged therefor under the contract will be sufficient.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 769.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.